

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
CHARLESTON DIVISION

United States of America, *ex rel.*,)
Elaine Van Voris, Peter Van Voris,)
and John Johnston,)

Plaintiffs/Relators,)

Civil Action No. 2:09-cv-0005-BHH

v.)

ORDER

GenPhar, Inc.; Jian-yun Dong a/k/a)
John Dong; Danher Wang;)
and Vaxima, Inc.;)

Defendants.)

This matter is before the Court upon the motion of Plaintiffs/Relators Elaine Van Voris, Peter Van Voris, and John Johnston (collectively, “Relators” or “Plaintiffs”) for an order voluntarily dismissing, pursuant to Rule 41(a)(2) of the Federal Rules of Civil Procedure, all substantive claims of this qui tam case filed under the False Claims Act, 31 U.S.C. §§ 3729 *et seq.* (“FCA”). (See ECF No. 187.) Also pending is pro se Defendant Jian-yun Dong’s (“Dong”) motion for recovery of legal fees. (See ECF No. 194.)

In accordance with Local Civil Rule 73.02(B)(2)(e) (D.S.C.), the matter was referred to a United States Magistrate Judge for preliminary determinations. On March 5, 2018, Magistrate Judge Kaymani D. West issued a report and recommendation (“Report”) outlining the issues and recommending that the Court grant Relators’ Rule 41(a)(2) conditional motion for court order of dismissal of claims (ECF No. 187). The Magistrate Judge recommended that the dismissal be with prejudice as to Relators and without prejudice as to the Government. In addition, the Magistrate Judge recommended that the

Court find that Defendants are not entitled to attorney's fees or costs pursuant to 31 U.S.C. § 3730(d). The Magistrate Judge also recommended that the dismissal of claims be without prejudice to Relators being permitted to petition the Court for attorney's fees and costs within 60 days of a final judgment affirming the convictions in the related criminal matters. Lastly, the Magistrate Judge recommended that the Court deny Dong's motion for recovery of legal fees (ECF No. 194).

Attached to the Report was a notice advising the parties of their right to file written objections to the Report within fourteen days of being served with a copy. To date, no objections have been filed.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261 (1976). The Court is charged with making a de novo determination only of those portions of the Report to which specific objections are made, and the Court may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge, or recommit the matter to the Magistrate Judge with instructions. 28 U.S.C. § 636(b)(1). In the absence of specific objections, the Court reviews the matter only for clear error. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct a de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'") (quoting Fed. R. Civ. P. 72 advisory committee's note).

Here, because no objections were filed, the Court has reviewed the record, the applicable law, and the findings and recommendations of the Magistrate Judge for clear

error. After review, the Court finds no clear error and agrees with the Magistrate Judge's recommendations.

Accordingly, the Court adopts the Magistrate Judge's Report (ECF No. 214) and grants Relators' Rule 41(a)(2) conditional motion for court order of dismissal of claims (ECF No. 187), with prejudice as to Relators and without prejudice as to the Government. The Court also find that Defendants are not entitled to attorney's fees or costs pursuant to 31 U.S.C. § 3730(d). Furthermore, the dismissal of claims is without prejudice to Relators being permitted to petition the Court for attorney's fees and costs within 60 days of a final judgment affirming the convictions in the related criminal matters. Lastly, the Court denies Dong's motion for recovery of legal fees (ECF No. 194).

IT IS SO ORDERED.

/s/Bruce H. Hendricks
The Honorable Bruce Howe Hendricks
United States District Judge

March 27, 2018
Charleston, South Carolina